

Letter of Findings Number: 04-20120707
Sales Tax
For Tax Years 2009-11

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ISSUE

I. Sales Tax—Calculation.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-4-1; IC § 6-8.1-5-4; IC § 6-8.1-5-1; IC § 6-2.5-9-3.

Taxpayer protests the Department's calculations of sales tax which Taxpayer should have collected as a retail merchant.

STATEMENT OF FACTS

Taxpayer is an Indiana business. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had not collected the correct amount of sales tax for sales made during the audit period of 2009, 2010, and 2011. The Department therefore issued proposed assessments for sales tax and interest for those years. The Department did not impose penalty for any of the years. Taxpayer protests that the Department's calculations for sales tax due are not correct. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Sales Tax—Calculation.

DISCUSSION

Taxpayer protests the Department's calculations of sales tax which should have been collected during the audit period of 2009, 2010, and 2011. Taxpayer states that the percentage of sales which the Department considered as exempt sales was too low and that a higher percentage of exempt sales should be used in calculating the amount of sales tax due for the years at issue. The Department reviewed available sales documentation to determine Taxpayer's sales tax compliance rates. Taxpayer kept copies of invoices for service repairs for warranty items, but did not keep records of other sales. Via a sample review of the available invoices for 2009 and 2011, the Department determined that Taxpayer had correctly charged sales tax on repair items on those invoices. The Department allowed the exempt sales which could be verified and also allowed an additional 15 percent of total sales as exempt. The Department then calculated the amount of sales tax which should have been collected on the remaining sales. Finally, the Department gave credit for sales tax previously remitted. Taxpayer believes that the Department should allow a higher additional percentage of total sales as exempt sales. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The sales tax is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state. (Emphasis added).

The Department also refers to IC § 6-2.5-4-1, which states in relevant part:

- (a) A person is a retail merchant making a retail transaction when he engages in selling at retail.
- (b) A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he:
 - (1) acquires tangible personal property for the purpose of resale; and
 - (2) transfers that property to another person for consideration.
- (c) For purposes of determining what constitutes selling at retail, it does not matter whether:
 - (1) the property is transferred in the same form as when it was acquired;
 - (2) the property is transferred alone or in conjunction with other property or services; or
 - (3) the property is transferred conditionally or otherwise.

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Next, IC § 6-2.5-9-3 provides:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes (as described in [IC 6-2.5-3-2](#)) to the department; holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state. If the individual knowingly fails to collect or

remit those taxes to the state, he commits a Class D felony.
(Emphasis added).

Also, IC § 6-8.1-5-4(a) provides:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

Therefore, a retail merchant is required to collect and remit sales tax to the Department and is liable for any uncollected and/or unremitted sales tax. Also, a retail merchant is required to keep records which the Department may review for sales tax compliance purposes.

In this case, Taxpayer states that the Department determined in its audit report that Taxpayer had correctly collected sales tax on the sales for which it was able to provide invoices. Taxpayer believes that the Department should apply the percentages it verified via those invoices to total sales. Taxpayer states that it primarily provides repair services and that it does not typically sell parts. Therefore, a significant portion of all sales are actually labor charges, which Taxpayer states would not be subject to sales tax. After the administrative hearing, Taxpayer provided several documents in support of its position.

The documentation consists entirely of sheets with two columns listed on them. One column is labeled "Cash Received" and the other is labeled "Exempt." No other data is listed on the documents. No invoices, contracts, or other detailed documentation were provided. Taxpayer believes that a contemporaneously kept log is good evidence that its numbers regarding exempt and taxable sales are more accurate than the Department's calculations.

After review of the documentation provided in support of the protest, the Department is unable to agree with Taxpayer's argument. Taxpayer provided no documentation to support the bare numbers it listed in the two columns. Therefore, there is no way to tie the numbers in Taxpayer's columns to any other data. This is not sufficient to prove the proposed assessments wrong, as required by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

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